

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

North Baja Pipeline LLC

Docket Nos. CP01-22-000,
CP01-22-002,
CP01-23-000,
CP01-24-000,
and CP01-25-000

ORDER ISSUING CERTIFICATES,
NGA SECTION 3 AUTHORITY AND PRESIDENTIAL PERMIT

(Issued January 16, 2002)

On October 31, 2000, North Baja Pipeline LLC (North Baja) filed, in Docket Nos. CP01-22-000 and CP01-23-000, an application for a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA) to construct and operate a 79.8-mile natural gas pipeline. The application also seeks NGA section 3 authorization and a Presidential Permit for gas export facilities. On May 18, 2001, the Commission issued a preliminary determination on non-environmental issues in this proceeding.¹ On September 6, 2001, North Baja filed an amendment to its application. This order reviews that amendment and the environmental impacts of the project under consideration and issues a certificate of public convenience and necessity subject to certain environmental conditions.

Background

North Baja's proposed project would provide up to 500 MMcf per day of capacity from an interconnection point with El Paso Natural Gas Company (El Paso) near Ehrenberg, Arizona, to a point on the international border between Yuma, Arizona, and Mexicali, Baja California, Mexico. North Baja's pipeline project is the U.S. portion of an integrated U.S.-Mexican pipeline being proposed to meet the requirements of the rapidly

¹95 FERC ¶ 61,259 (2001), order granting clarification and dismissing rehearing, 96 FERC ¶ 61,090 (2001).

growing market for natural gas service in northern Baja California, Mexico, and southern California. North Baja indicated that it had long-term agreements in place for 100% of its pipeline capacity starting in January 2004.

As a new pipeline company, North Baja also requested, in Docket No. CP01-24-000, a blanket certificate pursuant to Subpart G of Part 284 of the Commission's regulations to provide open-access transportation service for its customers. In Docket No. CP01-25-000, North Baja requested a blanket certificate pursuant to Subpart F of Part 157 of the regulations to perform routine construction activities and operations.

The Commission's May 18, 2001 order in this proceeding made a preliminary determination on the non-environmental issues raised by North Baja's application. That order's findings support issuance of North Baja's requested authorizations, subject to the conditions discussed therein. The Commission determined that the proposed project will provide substantial public benefits with minimal adverse impacts. Applying the standards outlined in the Commission's statement of policy on certification of new pipeline facilities,² the Commission found that because North Baja is a new entity, there are no concerns regarding subsidization or adverse impacts on existing customers.

The May 18, 2001 order also discussed the concerns expressed by El Paso's customers regarding whether El Paso will be able to continue reliable and economic natural gas transportation service for its existing shippers, as well as provide service for North Baja's shippers. The Commission pointed out, however, that its regulations and El Paso's tariff provide shippers the assurance that they can continue to receive reliable service to satisfy their requirements at just and reasonable rates. The Commission also concluded that North Baja's shippers will have realistic opportunities to complete their upstream arrangements without adversely affecting El Paso's existing customers.

The Commission also found that, because over 70 percent of the proposed pipeline route consists of public lands, lies within dedicated road rights-of-way, or has already been acquired by North Baja, the potential for adverse impact on landowners is outweighed by the demonstrated public need for the project. The proposed project's primary gas markets are Mexican electric generation plants and a Mexican gas distribution system. The preliminary determination found that serving the needs of Mexico is consistent with the public interest, in accordance with section 3 of the NGA

²Certification of New Interstate Gas Pipeline facilities (Policy Statement), 88 FERC ¶ 61,227 (1999), order clarifying statement of policy, 90 FERC ¶ 61,128 (2000).

and the North American Free Trade Agreement (NAFTA).³ North Baja will also directly serve the growing energy needs in western United States markets. A portion of the electric production from the La Rosita Plant in Mexico will be exported to the United States to relieve the critical shortages of electricity in California. The North Baja pipeline will also be used to deliver gas for use as fuel in the electric generating plant operated by Otay Mesa Generating Company (Otay Mesa) in San Diego, California.⁴

In the preliminary determination, the Commission further found that North Baja's proposed facilities are properly designed to provide the services it intends to provide. The Commission noted that North Baja proposes to provide firm and interruptible transportation service at both recourse and negotiated rates. The Commission required North Baja to file additional information on its negotiated rates when it begins providing such service.

Regarding the recourse rates, the Commission stated that when North Baja makes it filing to place tariff sheets into effect, it must revise its initial rates to reflect any change in the cost of debt. As stated in the preliminary determination, North Baja must file an actual tariff 60 days prior to the in-service date that reflects the Gas Industry Standards Board (GISB) standards as revised by the Commission at that time. The standards must either be incorporated by reference or incorporated verbatim, but not both. North Baja must file a chart that identifies the location of the GISB standards incorporated into the tariff verbatim.

North Baja is also required to make a filing within the first three years of its actual operation showing the actual costs and revenues. In that proceeding, the Commission will examine North Baja's claimed operating costs and make determinations regarding its recourse rates. In the three-year restatement filing, North Baja must provide updated

³North American Free Trade Agreement Implementation Act, Pub. L. 103-182 (December 8, 1993) 107 Stat. 2057; Implementation of the North American Free Trade Agreement Act, Executive Order No. 12889, 58 Fed. Reg. 69681 (December 30, 1993).

⁴Otay Mesa Generating Company, 96 FERC ¶ 61,178 (2001). The Commission approved Otay Mesa's request for a Presidential Permit and authority to site, construct, operate and maintain natural gas import facilities at the U.S.-Mexico border near San Diego, California. Otay Mesa indicates that it will rely on pipeline transportation services by North Baja, which will transport Otay Mesa's gas in the U.S., deliver it at the Mexican border near Ehrenberg, Arizona to the Gasoducto Bajanorte pipeline an Transportadora de Gas Natural de Baja California (Transportadora), which will redeliver the gas to Otay Mesa's proposed import facilities.

cost-of-service data, including cost of plant in service and a compression gas flow analysis that includes compression and operating pressure of its facilities.

The Commission also found that the issuance to North Baja of a Presidential Permit and NGA section 3 authorization to construct, operate and maintain its proposed border facilities will not be inconsistent with the public interest, subject to the conditions to be set forth in the Presidential Permit, including the language requested by the Secretary of State, and completion of our environmental review. The Commission likewise made a preliminary determination that North Baja's request for a Part 284, Subpart G Blanket Certificate and a Part 157, Subpart F Blanket Certificate will be granted.

The May 18, 2001 order noted that some of the interveners and commenters protest North Baja's proposal based on environmental issues. The Commission also received proposed major route alternatives and variations. The Commission indicated that these concerns would be addressed in the environmental review of the proposed project. On July 17, 2001, the Commission issued an order granting clarification and dismissal of a request for rehearing of the May 18, 2001 order. There are no other requests for rehearing pending. The environmental review of the proposed project is discussed below.

Environmental Analysis

On January 3, 2002, the Commission staff issued a joint Environmental Impact Statement/Report (EIS) that was prepared in cooperation with the California State Lands Commission (CSLC). A notice of availability of the EIS was published in the Federal Register on January 11, 2002. Approximately 650 copies of the EIS were mailed to agencies, groups, and individuals on the mailing list. The EIS included copies of all comment letters received on the Draft EIS and the Commission staff's responses to those comments. Based on information provided by North Baja and further developed by field investigations, literature research, alternative and route variation analyses, and contacts with Federal, state, and local agencies and individual members of the public, the EIS concludes that construction and operation of the proposed project will result in a limited adverse environmental impact. The EIS further concludes that if the project is constructed and operated as proposed by North Baja and in accordance with the recommended mitigation measures, it would be an environmentally acceptable action. These recommended mitigation measures, which the Commission is adopting, include a condition which requires North Baja to construct two routing alternatives that will reduce the impact on the federally listed desert tortoise.

The Commission has reviewed the information and analysis contained in the EIS regarding the potential environmental effect of the project. Based on our consideration of this information, we agree with the conclusions presented in the EIS and find that North Baja's project, if constructed and operated in accordance with the recommended and proposed environmental mitigation measures in Appendix A to this order, is environmentally acceptable. Therefore we are including the environmental mitigation measures recommended in the EIS as conditions to the authorizations issued by this order for North Baja.

Some commenters expressed their concern that the proposed route within 18th Avenue near the City of Blythe, California, is too close to their houses and are concerned for their safety should a pipeline incident occur. The EIS addressed these concerns and explains that the U.S. Department of Transportation (DOT) is solely responsible for establishing criteria and requirements for the safety of the natural gas pipeline facilities. DOT sets standards for the design, construction, inspection, and operation of natural gas pipelines in accordance with the Natural Gas Pipeline Safety Act of 1968. DOT's safety standards specify material selection and qualification, minimum design requirements, and protection from internal, external, and atmospheric corrosion. Any applicant for a certificate from the Commission is required to verify that the proposed facilities would meet DOT safety standards.

As described in the EIS, North Baja proposes to exceed the DOT safety requirements for the portion of its pipeline along 18th Avenue by using thicker-walled pipe than required and by installing the mainline valves at a closer interval than required by the DOT. These mainline valves would be remotely actuated and would isolate the pipeline in the event of a significant loss in pressure. By the use of remote actuators and the closer interval, North Baja would be able to control the gas more quickly if an accident were to occur.

Other commenters, some of whom own property along 18th Avenue, state that they would prefer that the pipeline be placed within the road to minimize the impact on farming activities and avoid disruption of irrigation systems. The Assistant City Manager/Emergency Services Coordinator for the City of Blythe commented that he also prefers the proposed alignment within the 18th Avenue public road right-of-way because it would safeguard against inadvertent contact with agricultural equipment in the cultivated fields. The EIS included an analysis of four alternative routes that would minimize disturbance to the residents along 18th Avenue and concluded that none of the alternatives would be environmentally preferable to North Baja's proposed route.

Under the provisions of a 1993 Memorandum of Understanding between the DOT and the Commission, Commission staff notified the DOT's Office of Pipeline Safety of the safety concerns raised by the commenters. Should DOT identify any new action or requirement at a later date, it can be incorporated into the construction and/or operation of the pipeline.

Finally, in comments on the draft EIS, the U. S. Environmental Protection Agency (EPA) and Imperial County, California, question whether the Commission's evaluation should also examine the environmental impacts of the generation stations in Mexico and two cross-border transmission lines that will be built to import electricity from the Mexican plants.⁵ Because the Mexican plants will utilize the natural gas volumes transported by North Baja, the commenters assert that North Baja's pipeline, the Mexican generation plants, and the transmission lines are connected actions and seek mitigation/compensation from either North Baja or the Mexican power plants for emissions from the plants that could cross the border into California.

The EIS notes that the U.S. Department of Energy (DOE), in cooperation with the Bureau of Land Management (BLM), has prepared an environmental assessment for the cross-border transmission lines as part of its analysis to issue a Presidential Permit for the importation of electricity from Mexico. In response to the same "connected-action" concerns raised by the parties in DOE's Presidential Permit proceeding, DOE's environmental assessment stated that:

DOE and BLM do not agree that the actions analyzed by DOE in this EA and the actions analyzed by FERC in a draft EIS for the North Baja Natural Gas Pipeline Project are connected actions. While the agency actions (and the regulated applicant activities) for the transmission lines on the one hand and the pipeline on the other are related and complementary, they are independent actions which serve distinct functions and which can proceed separately.⁶

⁵On February 6, 2001, the Mexican government granted a permit allowing for 250 MW of InterGen Energy's (InterGen) La Rosita Plant production to be exported to the U.S. Western grid. InterGen is one of North Baja's proposed expansion shippers.

⁶U.S. Department of Energy, Environmental Assessment for Presidential Permit Application for Baja California Power, Inc and Sempra Energy Resources (Sempra) DOE/EA-1391. Along with being the sponsor for the cross-border transmission lines, Sempra will also sponsor a 600 MW plant designated as the Temelectrica de Mexicali (continued...)

The EIS concurs with DOE and BLM that the three actions do not need to be analyzed as one project and concludes that the Commission lacks jurisdiction over the transmission lines and the Mexican generation facilities.

However, it should be noted that the Cumulative Impacts section of the EIS presents an analysis of the Mexican power plants that would receive natural gas from the North Baja. The analysis states that the Mexican ambient standards are similar to (and in some areas more stringent than) the United States Federal ambient standards. In addition, Sempra and InterGen have voluntarily agreed to install control technology, similar to that required in California, to further limit emissions from the power plants. The DOE performed a dispersion model analysis in its EA and determined that emissions from the three Mexican power plants exporting electricity to the United States would not increase ambient concentrations in the United States above the EPA-defined significant impact levels.

Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁷ North Baja shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies North Baja. North Baja shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

North Baja's Amendment to its Application

In its proposed amendment, North Baja states that it can increase the pipe wall thickness and compressor horsepower of the pipeline project without increasing project costs. North Baja states that it has secured thicker-walled pipe that would increase the maximum allowable operating pressure from 1,000 psig to 1,150 psig. North Baja also

⁶(...continued)

Power Plant. This plant will also utilize natural gas transported by North Baja.

⁷See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1989); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

states that it was able to purchase 7,200 horsepower compressor turbines instead of the 6,270 horsepower turbines proposed in its initial application. North Baja states that these design modifications would allow it to postpone installation of additional compression and pipeline facilities, thereby reducing the environmental impact of future throughput increases. However, notwithstanding these design modifications, North Baja states that it is not proposing to increase either its originally proposed certificated capacity, 500 MMcf per day, or its proposed maximum operating pressure, 972 psig.

Notice of the amendment was published in the Federal Register on September 21, 2001.⁸ Timely protests were filed by BP Energy Company jointly with Amoco Production Company (BP and Amoco) and by an ad hoc group of shippers including the El Paso Municipal Customer Group, Arizona Gas Division of Citizens Communications Company, Southern Union Gas Company, Public Service Company of New Mexico, Salt River Project, El Paso Electric Company, Arizona Electric Power Cooperative, Inc, and Phelps Dodge Corporation (Shippers). The Shippers state their protest is supported by Southwest Gas Corporation.

BP and Amoco note that North Baja's proposed design modifications in its amendment would increase the daily design capacity from 500 MMcf to 629 MMcf in the winter and 593 MMcf in the summer. BP and Amoco state that this increase will decrease the load factor of the proposed rates, thereby allowing North Baja to over-recover its cost of service. BP and Amoco state that North Baja should recalculate its maximum recourse rate to reflect the increased capacity.

The Shippers state that the Commission should ensure that the increased capacity will not cause further degradation of the upstream capacity on El Paso's system. The Shippers state that El Paso has failed to maintain sufficient facilities to provide firm service to its existing customers and is currently experiencing a mainline capacity deficiency due to increased customer utilization and decreased load diversity. The Shippers state that North Baja's amendment should therefore be rejected. Alternatively, the Shippers ask the Commission to clarify that North Baja will not be authorized to sell capacity beyond 500 MMcf per day.

As noted earlier in this order and previously in the preliminary determination and order on rehearing on the non-environmental issues in this docket, the Commission's regulations and El Paso's tariff provide customers with assurance for a reasonable period of time that they can continue to receive reliable service from El Paso at just and reasonable rates to satisfy their historic requirements. The Commission noted that North

⁸65 Fed. Reg. 48,668.

Baja's shippers have assumed the risk of acquiring upstream capacity and that this capacity may be acquired through released capacity, capacity from marketers that hold firm El Paso capacity, or capacity that becomes available from expiring contracts.⁹

We further note that concerns regarding constraints on El Paso's system are being addressed in the proceeding pending before the Commission in its ongoing Order No. 637 proceeding in Docket No. RP00-336-003, et al.¹⁰ In that proceeding, the Commission has directed El Paso to explain how it intends to meet the demands imposed by its full requirement contracts on its facilities upstream of the California border.

While the Shippers emphasize that North Baja has not updated its market demand projections in light of its proposed design modifications, North Baja states that it is not requesting authorization to operate the facilities at a higher capacity than requested in its original application. For these reasons, and in accordance with the Shippers' alternative request, this order will authorize North Baja to operate the proposed pipeline facilities only at a maximum capacity of 500 MMcf per day, rather than the increased design capacity afforded by the design modifications proposed in the amendment. Since North Baja's rates are designed based on billing determinants that reflect its maximum authorized operating capacity of 500 MMcf per day, North Baja will not over recover its costs. North Baja may file an application for authorization to operate the pipeline at its full design capacity at some future time when such additional throughput capability may be required.

We find that approval of the amendment to North Baja's proposed pipeline construction project is required by the public convenience and necessity. The proposed design modifications will allow North Baja to postpone installation of additional compression and pipeline facilities and reduce the environmental impact of future system expansion at no additional cost.

At a hearing held on January 16, 2002, the Commission on its own motion, received and made part of the record all evidence, including the application and exhibits thereto submitted in this proceeding, and upon consideration of the record,

⁹96 FERC at 61,375.

¹⁰95 FERC ¶ 61,461 at 62,664 (2001).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to North Baja authorizing it to construct and operate its proposed project, as described and conditioned herein, and in the preliminary determination.

(B) A Presidential Permit, in Appendix B, is issued to North Baja authorizing it to construct, operate and maintain the proposed border-crossing facilities at the border between the United States and Mexico, as described herein and in the preliminary determination.

(C) North Baja is authorized under NGA section 3 to site, construct, operate, and maintain the proposed border-crossing facilities at the border between the United States and Mexico, as described and conditioned herein and in the preliminary determination.

(D) Blanket certificates of public convenience and necessity under Subpart F of Part 157 and Subpart G of Part 284 of the Commission's regulations are issued to North Baja.

(E) The facilities authorized in ordering paragraphs (A), (B), (C) and (D) above are conditioned, as discussed in this order, on the following:

- (1) North Baja's making a rate filing after three years of operation showing actual costs and revenues;
- (2) North Baja's completing the authorized construction within two years of the final order;
- (3) North Baja's complying with Paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (4) North Baja's filing actual tariff sheets 60 days prior to placing the facilities in service to bring its tariff in compliance with GISB standards, all the requirements in Order Nos. 637, 637-A, 637-B, and subsequent orders, and any other tariff regulations in effect at that time; and
- (5) North Baja's filing executed firm contracts for the capacity covered by its precedent agreements.

(F) The authorizations in Paragraphs (A), (B) and (C) are conditioned on North Baja's compliance with the environmental conditions set forth in Appendix A attached hereto.

(G) North Baja shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies North Baja. North Baja shall file written confirmation of such notification with the Secretary within 24 hours.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

APPENDIX A

ENVIRONMENTAL CONDITIONS

1. North Baja Pipeline, LLC (North Baja) shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff data requests), and as identified in the environmental impact statement/environmental impact report (EIS/EIR), unless modified by this Order. North Baja must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the FERC (Secretary) and the California State Lands Commission (CSLC);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) and, for the lands under the CSLC's jurisdiction, the Executive Officer of the CSLC **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction,** North Baja shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. North Baja shall adopt the Eastside Alternative (including the Visual Variation) and the Cibola Variation.
5. The authorized facility locations shall be as shown in the EIS/EIR, as supplemented by filed alignment sheets and shall include the Eastside Alternative (with the Visual Variation) and the Cibola Variation. **As soon as they are available, and before the start of construction,** North Baja shall file with the Secretary revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

North Baja's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. North Baja's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

6. North Baja shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that will be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction** in or near that area.

This requirement does not apply to route variations recommended herein or minor field realignments per landowner needs and requirements that do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
7. North Baja shall file with the CSLC for the review and approval of the Executive Officer, a set of final engineering design drawings as issued for construction for the entire project in California, certified by a California-registered civil/structural engineer. In addition to the pipeline alignments and profiles, the drawings shall provide information such as tie-in details, pipeline grade and material specifications, wall thickness, weight and corrosion coating, minimum bend radius (wherever applicable, such as directional drilling installations), normal and maximum operating pressure, hydrostatic test information, cathodic protection and test stations, and location and details of the nearest upstream pipeline flow emergency shutdown equipment, etc.
8. **Within 60 days of the acceptance of this Certificate and before construction** begins, North Baja shall file an initial Implementation Plan with the Secretary and the CSLC for the review and written approval of the Director of OEP and the Executive Officer of the CSLC describing how North Baja will implement the mitigation measures required by this Order and the CSLC mitigation monitoring program. North Baja must file revisions to the plan as schedules change. The plan shall identify:
 - a. how North Baja will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - b. the number of EIs assigned per spread and a description of how North Baja will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions North Baja will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);

- e. the company personnel (if known) and specific portion of North Baja's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) North Baja will follow if noncompliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the mitigation training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
9. North Baja shall file updated status reports with the Secretary and the CSLC on a **weekly** basis **until** all construction-related activities, including restoration, are complete. On request, these status reports will also be provided to other Federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the FERC and any environmental conditions/permit requirements imposed by other Federal, state, or local agencies);
 - c. a description of any corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints that may relate to compliance with the requirements of this Order and the CSLC mitigation monitoring program, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by North Baja from other Federal, state, or local permitting agencies concerning instances of noncompliance, and North Baja's response.
10. North Baja must receive written authorization from the Director of OEP **before commencing service from the project**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.

11. **Within 30 days of placing the certificated facilities in service**, North Baja shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions North Baja has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. North Baja shall file with the FERC and the CSLC **before construction** a revised Construction Mitigation and Restoration Plan that incorporates provisions for testing for and alleviating compaction in desert habitats and additional requirements of other jurisdictional agencies that are received after the issuance of the final EIS/EIR.
13. If after 5 years it is determined that restoration is not successful, North Baja shall consult with the FERC, the CSLC, the Bureau of Land Management (BLM), and the California Department of Fish and Game (CDFG) to develop additional restoration measures.
14. North Baja shall implement the following additional conservation measures to minimize or avoid effects on burrowing owls:
 - a. unoccupied burrows discovered within the construction right-of-way during preconstruction surveys shall be collapsed or excavated prior to construction activities to prevent occupancy by owls;
 - b. artificial burrows, installed to minimize the effect of burrow loss, shall be placed within the home range of individual owls affected prior to burrow excavation or installation of one-way doors;
 - c. during the breeding season, North Baja shall conduct preconstruction surveys as soon as possible and conduct at least one survey within 1 week of construction; and
 - d. if active burrows (*i.e.*, eggs or young owls present) are discovered within the construction work area, North Baja shall curtail construction activities within a 200-foot buffer area until after the young have fledged.

15. North Baja shall not begin construction activities **until**:
 - a. the FERC completes formal consultation with the U.S. Fish and Wildlife Service;
 - b. the CDFG makes a consistency determination on the Biological Opinion pursuant to Section 2080.1 of the California Fish and Game Code;
 - c. North Baja obtains an incidental take permit under Section 2081 of the California Fish and Game Code, or receives concurrence from the CDFG that an incidental take permit is not required; and
 - d. North Baja has received written notification from the Director of OEP that construction or use of mitigation may begin.
16. North Baja shall defer construction and use of its facilities and any staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
 - a. North Baja prepares and files with the FERC and the CSLC, and submits to the Arizona and California State Historic Preservation Offices (SHPOs), the BLM, and the Bureau of Reclamation (BOR), as appropriate, any outstanding cultural resources reports, testing and evaluation reports, and necessary treatment plans;
 - b. North Baja files with the FERC and the CSLC the comments of the SHPOs, the BLM, and the BOR, as appropriate, on all cultural resources reports and plans submitted for review;
 - c. the Executive Officer of the CSLC reviews and approves all cultural resources reports and plans on the California portion of the project and notifies North Baja in writing that construction may proceed; and
 - d. the Director of OEP reviews and approves all cultural resources reports and plans, and notifies North Baja in writing that construction may proceed.

All material filed with the FERC and the CSLC containing **location, character, and ownership information** about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **“CONTAINS PRIVILEGED INFORMATION - DO NOT RELEASE.”**

17. North Baja shall conduct a noise survey to verify that the noise from the Ehrenberg Compressor Station operated at full load does not exceed a day-night sound level (L_{dn}) of 55 decibels of the A-weighted scale (dBA) at any noise-sensitive areas (NSA), and file the results of the noise survey with the FERC and the CSLC **no later than 60 days** after placing the compressor station in service. If the noise attributable to the operation of the compressor station at full load exceeds an L_{dn} of

55 dBA at any nearby NSAs, North Baja shall file a report on what changes are needed and shall install additional noise controls to meet that level **within 1 year of the in-service date**. North Baja shall confirm compliance with the L_{dn} of 55 dBA requirement by filing a second noise survey with the FERC and the CSLC no later than 60 days after it installs the additional noise controls.

18. **Before placing the pipeline system in service in California**, North Baja shall submit to the CSLC copies of the final operation and maintenance plan and emergency response plan. The final plans shall address internal and external maintenance inspections of the completed facility, including details of integrity testing methods to be applied, corrosion monitoring and testing and calibration of the cathodic protection system, leak monitoring, and emergency response plans and procedures.
19. North Baja shall provide the following documents to the CSLC **within 120 days of the completion of work in California**:
 - a. a set of “as built” construction plans, certified by a California-registered civil/structural engineer, showing all design changes or other amendments to the construction as originally approved;
 - b. certified copies of all completed pipeline integrity test results (hydrostatic tests, gauging runs, etc.) including copies of any failed test results with an explanation of the reason for failure; and
 - c. a post-construction written narrative report confirming completion of the project with discussion of any significant field changes or other modifications to the approved design or execution plan, and providing details of any extraordinary occurrences such as spill incidents and accidents involving serious injury or loss of life, and a summary of a quality control and weld inspection program including all failed and repaired welds.
20. North Baja shall ensure that a qualified monitor is present during clearing, grading, and trenching activities on the portion of the Cibola Variation that has not been surveyed.

APPENDIX B

PERMIT AUTHORIZING NORTH BAJA PIPELINE LLC
TO SITE, CONSTRUCT, OPERATE, AND MAINTAIN,
FACILITIES FOR THE IMPORTATION AND EXPORTATION
OF NATURAL GAS AT THE INTERNATIONAL BOUNDARY
BETWEEN THE UNITED STATES AND MEXICO

FEDERAL ENERGY REGULATORY COMMISSION
DOCKET NO. CP01-23-000

(Issued January 16, 2002)

North Baja Pipeline LLC (Permittee), a limited liability company organized under the laws of the State of Delaware doing business in the State of California, filed in Docket No. CP01-23-000 on October 31, 2000, an application pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 0204-112, for a Permit authorizing Permittee to construct, own, operate, and maintain natural gas transmission facilities described in Article 2 below at the international boundary between the United States and Mexico.

By letter dated March 6, 2001, the Secretary of Defense, and by letter dated March 8, 2001, the Secretary of State favorably recommended that the Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of a Permit is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 3, 1953, and February 3, 1978, respectively, the Secretary of Energy's Delegation Order No. 0204-112, effective February 22, 1984, and the Commission's regulations, permission is granted to Permittee to own, operate, maintain, and connect the natural gas transmission facilities described in Article 2 below, upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Energy Regulatory Commission, and may be amended by the Federal Energy Regulatory Commission, upon proper application therefor.

Article 2. The following facilities are subject to this Permit:

The 30-inch pipe which will commence in California at the center of the All American Canal approximately 500 feet from the international boundary between the United States and Mexico near Mexicali, Mexico and interconnect with natural gas pipeline facilities to be constructed, owned and operated in Mexico by Semptra Energy Mexico.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the transportation of natural gas from the United States to Mexico only in the amount, at the rate, and in the manner authorized under Section 3 of the Natural Gas Act.

Article 4. The operation and maintenance of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States. The Permittee shall allow officers and employees of the United States, showing proper credentials, free and unrestricted access to the land occupied by the facilities in the performance of their official duties.

Article 5. If in the future it should appear to the Secretary of the Army that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of the Army, to remove or alter the same so as to render navigation through such waters free and unobstructed.

Article 6. The Permittee shall be liable for all damages occasioned to the property of others by the operation or maintenance of the facilities, and in no event shall the United States be liable therefor. The Permittee shall do everything reasonable within its power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittee agrees to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas exported or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.

Article 8. Neither this Permit nor the facilities, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for reasonable time in the event of the involuntary transfer of the facilities by operation of law (including transfer to receivers, trustees, or purchasers under

foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittee shall maintain the facilities in a condition of repair for the efficient transportation of natural gas and shall make all necessary renewals and replacement.

Article 9. Upon the termination, revocation, or surrender of this Permit, the transportation facilities herein authorized shall be removed within such time as the Commission may specify, and at the expense of the Permittee. Upon failure of the Permittee to remove such transportation facilities or any portion thereof, the Commission may direct that possession of the same be taken and the facilities be removed, at the expense of the Permittee, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agrees that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed at the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to any action which the Government of the United States in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittee to any foreign government.

By the direction of the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions, and requirements of this Permit, the Permittee this _____ day of _____, 2002 has caused its name to be signed by _____, pursuant to a resolution of its Board of Directors duly adopted on the _____ day of _____, 2002, a certified copy of the record of which is attached hereto.

North Baja Pipeline LLC

By _____

(Attest)

Executed in triplicate